**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.**

**CWP No.861 OF 2005.**

**Date of Decision: 11.7.2007**

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Amriti Devi …Petitioner

Versus.

Union of India & Ors. .. Respondents.

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**The Hon'ble Mr. Justice Deepak Gupta, J.**
**The Hon'ble Mr. Justice Sanjay Karol, J.**

*Whether approved for reporting?*

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| For the Petitioner: | Mr. Shrawan Dogra, amicus curiae |
| For the Respondents: | Mr. Kulbhushan Khajuria, Central Government Counsel. |

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Deepak Gupta, J (Oral).

This petition has been received through Jail from one Smt. Amriti Devi widow of Ex. Havaldar Roop Lal. She along with her husband and son were convicted for having committed the offences under Section 302/34 IPC and sentenced to undergo life imprisonment. Petitioner's husband Roop Lal was receiving military pension but after his conviction, the respondents passed an order under Rule 82 of the Pension Regulation of the Army, whereby the payment of pension was withheld to him. Roop Lal expired on 10.3.2004. The present petition was received in this Court on 27.8.2005, in which the petitioner has challenged the order withholding payment of the pension payable to her husband and has prayed that family pension be paid to her.

Notice of the petition was given to the respondents and the respondents in their reply have given the following reasons for withholding the military pension of the deceased Roop Lal which would otherwise have been paid to him.

> "3. That it is submitted that after discharge from service, the said pensioner involved in a criminal case "attempt to murder case" under Section 307/34 IPC on 18 Apr 1996 for which he was lodged in the Sub Jail, Bilaspur (HP) with effect from 22 Apr 1996 and was under trial in the court of Learned District & Sessions Judge, Bilaspur (HP). The above named pensioner, his wife Smt. Amriti Devi and his son Shri Pradeep Kumar was sentenced under Section 302 IPC read with Section 34 IPC to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- each. Since the pensioner was put behind the bar to undergo rigorous imprisonment for life due to conviction by a criminal court, his service pension granted to him vide PPO No. S/68282/86 as amended vide corrigendum PPO No. S/Corr/151777/187, was suspended with effect from 01 Aug 2001 by his concerned Pension Disbursing Authority that is DPDO Shimla under the provisions of para 29 of pension payment instruction 1973 (Revised) (Extract attached as Annexure R-1) which clearly speaks that "pensioner are liable to forfeiture of their pension, if convicted by any criminal court in serious crime including political offences on guilty of grave misconduct". The pensioner vide his petition dated 08 Oct 2001 had approached the office of EME Records through the office of Superintendent, Model Central Jail, Nahan (HP) for restoration of his service pension. In response to the above, a suitable reply was given to the individual vide EME Records

> letter No. 13800713/SP-5/Pen dated 16 Feb 2002 stating that his service pension can only be restored on release from imprisonment and by submitting an application, along with a copy of judgment giving complete information like the nature of offence, circumstances in which it was committed and the sentence passed by the Court / Appellate Court before his pension Disbursing Authority for their further proceeding of the case to the Pension Sanctioning Authority that is PCDA (P) Allahabad."

It would be pertinent to mention that the petitioner along with the petition has attached a copy of the judgment of this Court in ***CWP No. 305 of 2000,*** titled ***Jeet Ram ( Court on its own Motion) versus Union of India and others*****,** decided on 18.2.2000. Placing reliance on the judgment of the apex Court in **Rameshwar Yadav versus Union of India and another,** 1989 Supp (2) SCC 565, this Court held as follows:-

> "Relying on the above ratio laid down in Ramehwar Yadav, in our opinion, in the special facts and circumstances of the case, particularly in the light of the fact that no order was passed till the prisoner approached this Court by addressing a letter and making a complaint that he was not paid any amount towards the pension, ends of justice would be met if we direct the respondents- authorities to release the pension to the extent of 90 per cent. In view of his conviction and sentence, he may not be paid 10 per cent pension. It is also open to him, as observed in Rameshwar Yadav to request the authorities to pay the amount in accordance with law after he is released from imprisonment."

In the present case, the respondents for reasons best known to them have not even placed before us the decision taken by them for withholding the military pension of the deceased Roop Lal. In the absence of such decision being placed on record, we cannot decipher the reasons which may have weighed with the authority.

In view of the fact that the order has been withheld from this Court, we have to draw an adverse inference against the respondents and presumption can be drawn that the order withholding pension is not passed on satisfactory reasons. The petitioner in para 10 of the petition has also referred to certain other cases in which in similar circumstances this Court enhanced the pension of the convict to 90%. The observations made in the petition in this regard have not been derived in the reply filed by the respondents and are deemed to be admitted.

Keeping in view the aforesaid discussion, we are of the considered view that the respondents have failed to given any plausible reasons for taking the decision of withholding the military pension payable to Roop Lal and after his death to his wife Smt. Amriti Devi. Following the earlier judgment of this Court as well as the Apex Court, we feel that ends of justice would be met if we direct the respondents- authorities to release the pension to the extent of 90% till the death of Roop Lal and thereafter 90% of the family pension payable to Smt. Amriti Devi. It is also open to Smt. Amriti Devi to request the authorities to pay the balance amount of withheld pension to her after she is

released from imprisonment in accordance with the directions given in the judgment of Rameshwar Yadav's case.

The writ petition is disposed of in the aforesaid terms.

We place on record the valuable assistance rendered by Shri Shrawan Dogra, amicus curiae in the present case.

( Deepak Gupta ),J

July 11, 2007. ( Sanjay Karol ), J.

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